IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 405 OF 1994

Shri Ramkrishna Waman Madye,
Occupation-Business, residing
at Malwan, District Sindhudurg. ..Petitioner
Orig.Deft.

Vs.

Smt. Manorama Bhalchandra Dhargalkar,
Occupation Household,
residing at Malwan,
District Sindhudurg. ..Respondent
Orig.Plff.

Mr. Rajendra S. Desai for the petitioner.
Mr. K.y. Mandli.k for the respondent.

CORAM : ANOOP V.MOHTA J.

DATE : 5TH AUGUST, 2005.

ORAL JUDGMENT

. The petitioner-tenant has invoked Article 227 of the Constitution of India and sought to challenge the concurrent findings given by the Courts below of granting decree for possession in favour of the respondent-landlord on the ground of default, as contemplated under the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 (for short Bombay Rent Act).

2. The petitioner is the tenant of the respondent-landlord. The monthly tenancy was Rs.10/-. The demand notice dated 7/12/1984 issued for arrears of rent. There was no reply or resistance to the said demand notice within 30 days. There was no dispute raised of any kind against the said demand of arrears of rent. There was no application filed, as contemplated under the Act for fixation of rent or standard rent. The Civil Judge,J.D. Malvan, (trial Court) by the judgment and order dated 21/8/1986, decreed the suit and directed to handover the possession with further direction to pay the arrears of rent to the landlord. The appellate Court i.e. the Additional District Judge, Sindhudurg, after considering the rival contentions raised by the parties, dismissed the appeal and confirmed the judgment and order passed by the trial Court.

3. Heard the learned Counsel appearing for the parties. The basic submission made by the learned Counsel, Mr. Desai, appearing for the petitioner, in reference to the observation made by the trial Court, regarding the character of the witness and also referring to the omissions of some pleadings. Section

52 of the Evidence Act, is very clear, in so far as, character of any person, which is irrelevant and specially in such civil cases. Even the alleged omission in the written statement, is unimportant in the facts and circumstances of the case. Any way this submission no way disturb the concurrent findings given by the Courts below.

4. The learned Counsel, Mr. Mandlik, appearing for the respondent-landlord has relied on **A.I.R. 1976 S.C. 2005 Harbanslal Jagmohandas and another V. Prabhudas Shivlal)** and pointed out the mandate of the provisions of Bombay Rent Act. In view of the undisputed position of not depositing the rent and not filing any application within the prescribed period and not raising any dispute about arrears of rent, that itself is sufficient to respect the provisions of law and in these circumstances, the Court has no option but to grant the decree for possession. Both the Courts therefore, have rightly granted the decree for possession on the ground of default.

5. Taking into consideration the above reasons in the circumstances, apart from the reasoning given by the

Courts below, there is no case made out to interfere with the concurrent findings given by the Courts below. The writ petition is therefore, dismissed. Rule discharged. The interim stay granted also stands vacated. There shall be no order as to cost.

[ANOOP V. MOHTA, J.]